

DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, NV 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: darren.brenner@akerman.com
Email: natalie.winslow@akerman.com

*Attorneys for The Bank of New York Mellon fka
The Bank of New York, as Trustee for the
Certificateholders CWALT, Inc., Alternative
Loan Trust 2006-4CB, Mortgage Pass-Through
Certificates, Series 2006-4CB and Mortgage
Electronic Registration Systems, Inc., as
nominee for BRS Citizens, N.A.*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS
CWALT, INC., ALTERNATIVE LOAN
TRUST 2006-4CB, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2006-
4CB,

Plaintiff,

vs.

MICHELLE R. CHURCH; SFR
INVESTMENTS POOL 1, LLC; HAMPTON &
HAMPTON COLLECTIONS LLC;
SILVERSTONE RANCH COMMUNITY
ASSOCIATION; DOE INDIVIDUALS I-X,
inclusive, and ROE CORPORATIONS I-X,
inclusive,

Defendants.

Case No.: 2:17-cv-00238-RFB-NJK

~~[PROPOSED]~~ **ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT IN PART**

AND

**DENYING SFR INVESTMENTS POOL 1,
LLC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

AND

**DENYING SILVERSTONE RANCH
COMMUNITY ASSOCIATION'S
MOTION FOR SUMMARY JUDGMENT**

SILVERSTONE RANCH COMMUNITY
ASSOCIATION,

Cross-Claimant,

vs.

HAMPTON & HAMPTON COLLECTIONS
LLC, a Professional Corporation,

Cross-Defendant.

SFR INVESTMENTS POOL 1, LLC,

Counter/Cross-Claimant,

vs.

THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS
CWALT, INC., ALTERNATIVE LOAN
TRUST 2006-4CB, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2006-
4CB; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., AS
NOMINEE FOR BRS CITIZENS, N.A.;
MICHELLE R. CHURCH, an individual,

Counter/Cross-Defendants.

The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificateholders CWALT, Inc., Alternative Loan Trust 2006-4CB, Mortgage Pass-Through Certificates, Series 2006-4CB (**BNYM**) submits this proposed order following the court's minute order granting BNYM's summary judgment motion as to BNYM's quiet title/declaratory relief claim only [ECF No. 51], denying SFR Investments Pool 1, LLC and Silverstone Ranch Community Association's (**HOA**) summary judgment motions, and entering judgment in favor of BNYM, as well as entering default judgment as to Michelle R. Church, in favor of SFR. ECF Nos. 62, 63.

FINDINGS OF FACT

Michelle R. Church and Irvin R. Church purchased property located at 8105 Bay Dunes Street, Las Vegas, Nevada 89131-4346; Parcel No. 125-10-817-008 ("Property") in 2005. The Property was subject to the CC&Rs of the HOA. On September 26, 2012, a grant bargain sale deed

1 transferring title of the Property from Michelle R. Church and Irvin R. Church to Michelle R.
2 Church, a married woman as her sole and separate property, was recorded on the Property as
3 Instrument No. 201209260004763.

4 The Churches borrowed \$400,000.00 to finance their purchase of the Property, which lender
5 Countrywide Home Loans, Inc. secured with a deed of trust recorded against the Property.
6 Mortgage Electronic Registration Systems, Inc. (**MERS**) was listed as beneficiary under the deed
7 of trust, solely as nominee for the lender and the lender's successors and assigns. MERS assigned
8 the deed of trust to BNYM on August 20, 2009, and the assignment was recorded on September 15,
9 2009.

10 The HOA, through its agent Hampton & Hampton, P.C., recorded a notice of delinquent
11 assessment lien against the Property on October 23, 2009, followed by a second notice of delinquent
12 assessment lien on October 6, 2010, a notice of default and election to sell on November 18, 2010,
13 a second notice of default and election to sell on August 26, 2013, and a notice of trustee's sale
14 against the Property on July 25, 2014.

15 Prior to the HOA foreclosure sale, then-servicer Bank of America, through its counsel at
16 Miles, Bauer, Bergstrom & Winters, LLP, requested from the HOA a calculation of the superpriority
17 portion of the HOA's lien on December 20, 2010.

18 On or about December 30, 2010, Hampton sent Bank of America a facsimile, stating that the
19 amount due for nine months of assessments on the above-referenced Property was \$2,025.72. On
20 January 21, 2011, Miles Bauer tendered that amount to the HOA, which the HOA accepted.

21 The HOA foreclosed on the property on September 10, 2014. SFR purchased the Property
22 for \$90,000.00.

23 **CONCLUSIONS OF LAW**

24 BNYM's claims are not time-barred. The court incorporates by reference its reasoning as
25 set forth in *Carrington Mortgage Services, LLC v. Tapestry at Town Center Homeowners Assoc.*,
26 381 F.Supp.3d 1289 (D. Nev. 2019). As the foreclosure sale in this case occurred on September 10,
27 2014, and the complaint was filed on January 27, 2017, none of BNYM's claims are time barred.

28 . . .

1 The court further finds that Bank of America, through Miles Bauer, paid the superpriority
2 portion of the HOA's lien prior to the HOA's foreclosure sale, as Miles Bauer tendered payment of
3 \$2,025.72 to the HOA, through Hampton, on January 21, 2011. This payment of the superpriority
4 lien operated to preserve BNYM's deed of trust. The court incorporates by reference its reasoning
5 as set forth in *The Bank of New York Mellon v. Mission del Rey Homeowners Assoc. et al.*, No.
6 2:17cv-02173-RFB-EJY, 2019 WL 4777305 (D. Nev. Sept. 30, 2019).

7 The court grants summary judgment in favor of BNYM as to its claim for quiet
8 title/declaratory relief. The court denies SFR's summary judgment motion. The court denies the
9 HOA's summary judgment motion as the claims for which the HOA sought summary judgment have
10 been dismissed. The court's determination that the superpriority tender in this case preserved
11 BNYM's deed of trust resolves all outstanding issues and claims as asserted by the parties to this
12 action. The court dismisses all remaining claims and counterclaims accordingly as it finds the issue
13 of tender to be dispositive in this case.

14 Accordingly, the interest of SFR Investments Pool 1, LLC or its successors and assigns in
15 the Property is subject to BNYM's deed of trust, recorded against the Property with the Clark County
16 Recorder as instrument no. 2005118-0004990. BNYM's deed of trust, as referenced in this
17 paragraph, remains a valid and existing encumbrance on the property.

18 The lis pendens recorded against the property with the Clark County Recorder as instrument
19 nos. 201702010001237 and 201703150001541 are expunged.

20 The certificate of cash deposit, at ECF No. 16, shall be returned to the legal owner, along
21 with all accrued interest.

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1 The Court also grants default judgment against Michelle R. Church and in favor of SFR. The
2 nonjudicial foreclosure sale conducted on September 10, 2014 extinguished Church's interest in the
3 Property. As a result, Michelle R. Church, her successors or assigns, has no interest or property right
4 related to the real property located at 8105 Bay Dunes Street, Las Vegas, Nevada 89131-4346;
5 Parcel No. 125-10-817-008.

6 **ORDER**

7 **IT IS SO ORDERED.**

8 

9 RICHARD F. BOULWARE, II
10 UNITED STATES DISTRICT JUDGE

11 December 26, 2019

12 DATED

13 **Submitted by:**

14 **AKERMAN LLP**

15 /s/ Natalie L. Winslow

16 NATALIE L. WINSLOW, ESQ., NV Bar #12125
17 1635 Village Center Circle, Suite 200
18 Las Vegas, Nevada 89134

19 *Attorneys for The Bank of New York Mellon*
20 *fka The Bank of New York, as Trustee for the*
21 *Certificateholders CWALT, Inc., Alternative*
22 *Loan Trust 2006-4CB, Mortgage Pass-*
23 *Through Certificates, Series 2006-4CB and*
24 *Mortgage Electronic Registration Systems,*
25 *Inc., as nominee for BRS Citizens, N.A.*

26 **Reviewed By:**

27 **KIM GILBERT EBRON**

28 /s/ Jason G. Martinez

JASON G. MARTINEZ, ESQ., NV Bar #13375
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139

Attorneys for SFR Investments Pool 1, LLC

LEACH KERN GRUCHOW ANDERSON SONG

/s/ Ryan W. Reed

RYAN W. REED, ESQ., NV Bar #11695
2525 Box Canyon Drive
Las Vegas, Nevada 89128

Attorneys for Silverstone Ranch Community Association